

SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

LEE'S MOORING HOUSEBOAT
RESIDENTS,

Petitioner,

v.

CITY OF SEATTLE AND STATE OF
WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondent.

SHB NO. 05-019

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

This case is an appeal by Lee's Mooring Houseboat Residents ("Lee's Mooring") of a denial by the City of Seattle ("Seattle") of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit for construction of a parking and caretaker structure in the Fremont neighborhood on Lake Union. Melody McCutcheon of Hillis Clark Martin & Peterson represented Lee's Mooring. Assistant City Attorney Roger Wynne represented Seattle. The Shorelines Hearings Board ("Board") in this case consisted of Bill Clarke, Presiding, William H. Lynch, Mitch Brown, Gordon Crandall, and Judy Wilson.¹ Kim Otis and Randi Hamilton of Gene Barker & Associates were the court reporters. The Board held a two-day hearing in Seattle and Lacey, Washington. A site visit was conducted on the first day of the hearing. The Board received testimony, exhibits, and arguments from the parties, and enters the following:

I. STIPULATED FINDINGS OF FACT

Prior to the hearing, the parties submitted 40 Stipulated Findings of Fact. The Board incorporates the parties' Stipulated Findings of Fact into its decision:

¹ The Board sat as a five-member Board rather than six because of a vacancy on the Pollution Control Hearings Board, which normally provides three of the six members of the Shorelines Hearings Board.

1. Lee's Mooring is located on the north shore of Lake Union in Seattle's Fremont neighborhood.
2. Specifically, Lee's Mooring is located at 933 North Northlake Way, on the south side of the street, roughly between the Aurora Bridge and Stone Way North.
3. Lee's Mooring is located in an Urban Stable (US) shoreline environment.
4. Lee's Mooring consists of essentially three components. First, farthest south (and therefore farthest out into Lake Union) is a commercial moorage of approximately 423 lineal feet with slips for 13 vessels.
5. Second, to the north of the commercial moorage is a floating home moorage with space for 15 homes. Fourteen of those spaces are currently occupied by homes. The floating home moorage is organized into a condominium.
6. Finally, linking the floating home moorage to the shore is a pile-supported parking deck with 15 parking spaces. It is immediately south of and adjacent to the sidewalk along the south side of North Northlake Way. The parking deck spans the ordinary high water mark of Lake Union, making the southern portion of the deck over water and the northern portion over land. The land under the parking deck is the only dry land on the lot. The amount of dry land on the lot extends from the northern boundary of the lot south a minimum of just under 18 feet to a maximum of approximately 40 feet.
7. The parking deck is located approximately nine feet below the grade of the street. A retaining wall separates the parking deck from the sidewalk.
8. Pedestrians may access the parking deck from the sidewalk via a wooden ramp that essentially follows the northeastern edge of the lot and deck.
9. Vehicles can access the parking deck through the lot to the west (the "Strickland" lot). Vehicles descend south from the street on a ramp located on the western edge of the Strickland lot, then turn to the left and drive east through the basement parking level of the Strickland building to access the Lee's Mooring parking deck.
10. Lee's Mooring has an agreement with the owner of the Strickland lot for access to the Lee's Mooring parking deck. In exchange for allowing access, Lee's Mooring has granted Strickland exclusive use of five parking spaces from 8 a.m. to 6 p.m., Monday through Friday. Signs above five spaces on the Lee's Mooring parking deck indicate which spaces are reserved for uses on the Strickland lot, with the notice that spaces are reserved for those uses Monday through Friday from 8:30 a.m. to 5:30 p.m.

1 11. With the exception of the agreement with Strickland, use of the parking spaces is
2 exclusively for the on-site commercial moorage, and the houseboat residents and their
3 guests.

3 **Project proposal.**

4 12. Lee's Mooring proposes to add a three-level structure above the existing parking deck.
5 The project will not increase over-water coverage.

6 13. The first level is an additional parking deck at street level accessible directly via a curb
7 cut from North Northlake Way. This upper parking deck will contain eight parking
8 spaces, five of which will be located under the additional two levels described below.
9 Those five spaces will be over dry land and the other three will be over water.

10 14. This upper parking deck will provide a public access easement from the sidewalk. A
11 five-ft.-wide public walkway (located inside a 10-foot-wide public access easement) will
12 lead from the northwest corner of the upper parking deck, along the western edge of the
13 deck. The walkway will terminate in a public area measuring 10 feet (in the north-south
14 dimension) by 27 feet (east-west) at the southwest corner of the upper parking deck.
15 Railings will be provided along the edge of the upper parking deck as necessary.
16 (Additional facts relating to views are discussed below).

17 15. The second and third levels will consist of a building over the northeast portion of the
18 upper parking deck. The second level will contain storage space accessory to the
19 commercial moorage and floating home moorage. The third level will feature additional
20 storage and living quarters for a commercial moorage caretaker. The roof of the structure
21 will contain a 150 square-foot deck. The storage/caretaker's building meets all shoreline
permit requirements.

16 16. As part of the project, the existing, lower parking deck will be reconfigured. The existing
17 ramp along the northeast corner of the lower deck (which currently provides pedestrian
18 access from the street) will be removed. An elevator will connect the lower parking deck
19 with the new levels added above. Stairs will also provide access between the lower
20 parking deck and the upper, street-level deck. Once the project is complete, the lower
21 parking deck will have 14 parking spaces (instead of the 15 currently provided). Of these
14 spaces, nine will be over dry land and five will be over water.

17 17. Five spaces on the lower parking deck will continue to be subject to the agreement with
18 Strickland. With that exception, use of the parking spaces on both decks will be for the
19 exclusive use of the caretaker, commercial moorage, and Lee's Mooring residents and
20 their guests.
21

Parking demand and supply.

18. A survey conducted by a representative of Lee's Mooring in June 2004 indicates the following information as of that date:

- a. Lee's Mooring houseboat residents own a total of 28 vehicles;
- b. Four (4) households own one vehicle;
- c. Six (6) households own two vehicles;
- d. Four (4) households own three vehicles;
- e. Eight (8) residents work "traditional 8-5" jobs to and from which they each drive a vehicle;
- f. Seventeen (17) residents either work "non-traditional" jobs, work at home, or are retired, so 17 vehicles have parking needs not subject to traditional commute times; and
- g. This survey information does not include the demand from the commercial moorage, guests of houseboat residents, or parking demand associated with services for houseboat residents (such as repair, maintenance, and other service personnel).

19. There are 15 spaces in the existing, lower parking deck. These spaces are inadequate to fully accommodate the minimum of 28 vehicles associated with Lee's Mooring houseboat resident demand documented as of June 2004.

20. The proposal is to provide a total of 22 parking spaces located on two levels.

21. The proposal, by adding the caretaker's quarters, will add demand for one additional vehicle, and City regulations (SMC 23.54.015) require that one additional parking space be provided on the Lee's Mooring site for this use.

22. The proposal will therefore increase the on-site parking supply by a total of six (6) spaces (net addition of 7 spaces less the additional 1-space demand). Even with this increase in supply, these spaces will be inadequate to fully accommodate the minimum of 28 vehicles associated with Lee's Mooring houseboat residents documented as of June 2004, plus at least one vehicle for the caretaker.

23. Lee's Mooring retained Heffron Transportation, Inc. ("Heffron") for assistance with the application and this appeal.

1 24. Among other things, Heffron prepared a Parking Utilization Study (dated September 20,
2 2004), which addressed on-street parking supply in the vicinity of Lee's Mooring, and a
3 Technical Memorandum: Summary of Off-Street Parking Research (dated October 11,
4 2005). The parties stipulate to the introduction of these documents at the hearing and will
5 discuss the documents' findings and conclusions at the hearing.

6 25. The following reflects statements made by Mr. Ken Phillips, Jr., Vice President of Thrifty
7 Park, Inc. d/b/a U-Park System ("U-Park") in interviews conducted jointly by counsel for
8 Lee's Mooring and the City. These are offered in lieu of a declaration from or testimony
9 by Mr. Phillips:

- 10 a. At present, there are two surface parking lots on the north side of N. Northlake
11 Way. The lots offer paid parking. The lots are operated by U-Park, which
12 operates over 100 such lots in the Seattle metropolitan area.
- 13 b. The smaller of the two lots is located immediately across N. Northlake Way from
14 Lee's Mooring. This smaller lot has approximately 24 spaces.
- 15 c. The larger lot is east of the smaller lot and a commercial building that separates
16 the lots. This larger lot has approximately 83 spaces.
- 17 d. Before construction in the year 2000 of the building that separates the two lots, U-
18 Park operated a single lot that spanned all of the space currently occupied by the
19 building and the two separate lots. Construction of this building restricted the
20 parking inventory from pre-construction levels.
- 21 e. Rates for monthly, daytime parking are \$92.50 for the larger lot and \$82.50 for
the smaller lot. For 24-hour, all-week access, a 10-15% increase applies. Cars
park where spaces are available, because individual spaces are not reserved.
- f. The number of spaces sold on a monthly basis varies, but they are typically
approximately 10 for the western lot, and approximately 70 for the eastern lot.
About two-thirds of the monthly parkers have parking rights during the day, with
the remainder having parking rights on a 24-hour basis.
- g. U-Park attempts not to sell monthly parking privileges for lots in which U-Park is
not confident it can provide availability. If a customer with monthly access
cannot find an available spot because the lot is full, U-Park works to satisfy the
customer, by providing parking in a different U-Park lot if such parking is
available or by reimbursing the customer for the cost of alternate parking or
crediting the customer's account. U-Park has received complaints from monthly
parkers that parking is not available in the eastern or western lots, which
complaints usually occur in response to the events described below that cause the
lots to be unavailable for parking or completely full.

- 1 h. U-Park currently believes it could accommodate at least 12 additional monthly
2 parkers in the larger, eastern lot. At present, U-Park would not be comfortable
3 selling any additional monthly parking privileges in the western lot.
- 4 i. The availability of the U-Park lots for parking is temporary, not permanent. U-
5 Park generally views the conversion of land on which it operates parking lots into
6 structures as inevitable. U-Park only has a month-to-month lease for these lots.
7 The lease may be terminated on a month's notice, although if a property owner
8 asked for termination of the parking use with less notice than that, U-Park would
9 accommodate that request. If U-Park's lease is terminated at a particular lot, it
10 can no longer provide parking at that lot.
- 11 j. Both lots are unavailable for parking or are completely full during certain annual
12 events in Fremont: Oktoberfest, the Solstice Parade, the 4th of July fireworks
13 display, and the Head of the Lake Regatta. For three of these four events (the
14 fireworks display being excluded), the lots are typically not available from
15 Thursday afternoon through Sunday evening.
- 16 k. Because of these four annual neighborhood events, the statement on page six of
17 the City's permit Decision that the larger lot "never gets more than about 75%
18 full" is incorrect.
- 19 l. Some events at the Lake Washington Rowing Club will affect the availability of
20 parking spaces at the two lots. The largest events at the Rowing Club tend to be
21 wedding receptions, and they create a demand for about 100 parking spaces.
Those types of events occur at least twice a month, from May to September. This
occurs when demand for parking from boaters and live-aboards is also highest.
Generally, the Rowing Club event demands are in the evenings, and so do not
conflict with the daytime parking demands of monthly parkers.

View corridor.

26. Under City law, a "view corridor" is "an open-air space on a lot affording a clear view
across the lot to the water from the abutting street." SMC 23.60.942.
27. Plan sheet A2.2, which will be provided at the hearing, describes the required view
corridor as 27 feet wide. However, subsequent to issuance of the permit decision, the
City Department of Planning and Development ("DPD") determined that the applicable
view corridor requirements would require a 22.5-foot view corridor for this project. The
32-foot "existing view corridor" indicated on the **eastern** side of the lot on Plan Sheet
A1.1 (to be provided at the hearing) refers to a requirement imposed by a prior permit for
this lot.

1 28. Instead, the only open-water view from the street may be had along the **western** side of
2 the lot, where approximately 10 feet of open water lie between the floating homes and the
western edge of the lot.

3 29. Under the proposal (as is the case now) floating homes lie within a portion of the required
22.5-foot view corridor.

4 30. The parties will present evidence depicting the effect, if any, of the proposal (in
5 particular, the new, street-level parking deck) on the required view corridor.

6 **Procedural history.**

7 31. On or about April 1, 2004, Lee's Mooring submitted an application for its proposal to
DPD.

8 32. DPD ultimately determined that the project required approval of a shoreline substantial
9 development permit and a shoreline conditional use permit, and a determination under the
State Environmental Policy Act ("SEPA").

10 33. On or about June 2, 2004, DPD sent a Correction Notice to Lee's Mooring seeking
11 additional information and corrections to its plans.

12 34. On or about September 23, 2004, Lee's Mooring responded to that Notice.

13 35. On or about October 27, 2004, DPD submitted a second Correction Notice to Lee's
Mooring.

14 36. On or about February 3, 2005, Lee's Mooring responded to that second Notice.

15 37. On or about June 16, 2005, DPD issued its decision. DPD denied the shoreline
substantial development permit and the shoreline conditional use permit. DPD cited
16 issues related to parking and the view corridor as the basis for the denial. The decision
noted that "[s]hould [DPD]'s decision be reversed on appeal," DPD issued a SEPA
17 determination of non-significance and listed conditions that would apply to any resulting
shoreline substantial development permit.

18 **Issues presented.**

19 38. Lee's Mooring timely appealed the decision to the Shorelines Hearings Board. The pre-
20 hearing order, as amended, listed three groups of issues raised by Lee's Mooring. Those
groups deal with parking, view corridor issues, and SEPA issues, respectively.

21 39. The parties settled a SEPA issue related to a condition intended to eliminate habitat for
predator fish species. The Board entered an order granting voluntary dismissal of that
issue.

1 40. The remaining issues are as follows:

2 Parking Issues

3 1. Did the City properly deny a shoreline substantial development permit
4 (“SSDP”) and shoreline conditional use permit (“SCUP”) under SMC
5 23.60.092(D) or other applicable authority because the proposed additional
parking may not be permitted as an accessory use over water because
adequate off-site dry land parking within 800 feet is reasonably available?

6 2. Did the City properly deny an SSDP and SCUP on the basis of SMC
7 23.60.092(B) or other applicable authority because that code section applies
8 and because the proposed additional parking may not be permitted as an
accessory use, either over water or on land, because it is not clearly necessary
for the operation of the permitted principal use of the lot?

9 3. Did the City properly deny a CUP because the proposed additional
10 parking is inconsistent with conditional use criteria under SMC 23.60.034,
SMC 23.60.604.A.3, WAC 173-27-160, WAC 173-27-210, or other
applicable shoreline permitting authority?

11 View Issues

12 4. Did the City err in concluding that the proposal would increase the site’s
13 nonconformity with the view corridor requirements or other applicable view
corridor regulations and, thus, that the proposal would require approval of a
14 shoreline variance?

15 5. Did the City err in concluding that the proposal did not comply with view
corridor requirements or other applicable shoreline permitting authority?

16 SEPA Issue

17 6. Under State Environmental Policy Act (“SEPA”) authority, did the City
18 properly impose condition 4 to provide views to the water from North
Northlake Way?

19 **II. BOARD FINDINGS OF FACT**

20 **[1]**

21 At the beginning of the first day of hearing, the parties reached a settlement relating to
view issues. Consequently, Lee’s Mooring dismissed Legal Issues 4, 5, and 6 from the appeal.

1 Stipulated Findings of Fact 26-30, which relate to view issues, are therefore not relevant to the
2 Board's resolution of the remaining contested legal issues.

3 [2]

4 Gemma Daggett, who lives in one of the houseboats with her husband and two children,
5 represented Lee's Mooring in the permitting process. As part of this, she surveyed Lee's
6 Mooring residents and surrounding businesses on parking demand and supply. In response to a
7 Notice of Correction issued by the City of Seattle Department of Planning and Development
8 seeking more information relating to the project, Lee's Mooring retained Tod McBryan of
9 Heffron Transportation Inc. ("Heffron") to analyze parking issues. (*Testimony of Gemma*
Daggett; Testimony of Tod McBryan)

10 [3]

11 Heffron's 2004 Report was a survey of parking on public rights-of-way (on-street
12 parking) and existing and future anticipated parking demand by Lee's Mooring. (*Ex. 3*)
13 McBryan, who has done a number of parking studies for developments in Seattle and as a
14 consultant for the city, used the methodology in Seattle's Client Assistant Memo 117 ("CAM
15 117") to count parking spaces. Use of all parking spaces on public rights-of-way within 800 feet
16 of Lee's Mooring ranged from 83% full on weekday evenings to 92% full on weekday
17 afternoons. If only the unrestricted parking spaces (those without specific time limits such as
18 one or two hour parking) on public rights-of-way within 800 feet of Lee's Mooring were
19 considered, use rates ranged from 96% full on weekday mornings to 99% full on weekday
20 afternoons. (*Ex. 3, page 3, Testimony of Tod McBryan*)

21 [4]

1 The City of Seattle's 2000 Comprehensive Neighborhood Parking study characterized
2 parking space use above 85% as full:

3 In parking studies, 85 percent occupancy of a parking lot is considered full for all
4 practical purposes (source: ITE Transportation Planning Handbook). At this level,
5 drivers looking for a place to park may have to circulate through several aisles of a
6 parking lot or structure, drive around one or more blocks for on-street parking, to find an
7 available space. Driver frustration is high, and complaints about the lack of parking
8 increase rapidly above 85 percent occupancy.

9 *(Ex. 10, page 13 fn. 2, Testimony of Tod McBryan, Testimony of John Shaw)*

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[5]

2 In preparing the 2004 Heffron Report, the Heffron field technician surveyed parking
3 demand and utilization in the two U-Park lots, but this information was not provided to Seattle
4 before the permitting decisions. Heffron did not include the information on the U-Park lots in its
5 2004 Report because Seattle had requested information on parking only on public rights of way
6 and covenanted parking. This request by Seattle was consistent with parking information it
7 typically requested in making permit decisions. *(Testimony of Tod McBryan)* Heffron
8 conducted surveys of the U-Park lots in 2004 on Tuesday, July 27 and Thursday, July 29 at
9 10:00 a.m., 2:00 p.m., and 7:30 p.m. each day. Heffron also surveyed the U-Park lots at 8:00
10 p.m. on Friday, August 20 and Saturday, August 21, 2004. *(Testimony of Tod McBryan, Ex. 24,*
11 *Ex. 25)* The information from these surveys shows that parking was available in the U-Park lots
12 on those days. These days did not include any Fremont events, and it is unclear whether an event
13 was being held at the Lake Washington Rowing Club.

[6]

1 Seattle's denial of the shoreline permits for the proposal was based in part on the
2 availability of parking in the two U-Park lots on N. Northlake Way. (*Ex. 7*) Parking availability
3 in these lots was not identified in the Notice of Correction issued by Seattle in 2004, and thus
4 was not included in the 2004 Heffron Report submitted to the City. Lee's Mooring was
5 surprised by the rationale of the City's denial. After the permit denials, Heffron conducted a
6 second parking analysis in 2005 focusing on the U-Park lots. This analysis had a number of
7 components, including the effects on parking caused by a planned Fremont Residential Parking
8 Zone ("RPZ"), Fremont community events, Lake Washington Rowing Club activities, and use of
the U-Park lots by businesses. (*Ex. 13*)

9 [7]

10 The City of Seattle has approved a RPZ for the Fremont neighborhood, and is working on
11 implementation of the RPZ, which requires approval by 60% of households within the RPZ. A
12 RPZ discourages long-term parking by non-residents of a neighborhood by issuing parking
13 decals only to residents. Non-residents are subject to parking limits such as one or two hour
14 parking, whereas residents are not. The Fremont RPZ has three zones, two of which are North
of the Lee's Mooring site across N. Northlake Way and 34th Street. (*Testimony of John Shaw*;
15 *Testimony of Tod McBryan*) If implemented, the likely effect of the RPZ will be to push some
16 parking demand outside of the RPZ. The U-Park lots and public parking spaces on N. Northlake
17 Way would likely have increased parking demand from implementation of the RPZ. (*Ex. 13*;
18 *Testimony of Tod McBryan*)

19 [8]

20 The U-Park lots are not available during Fremont community events. Events at the Lake
Washington Rowing Club impact street parking and parking in the U-Park lots mainly in the
21 morning and evenings, and during summer events such as weddings. Heffron's 2005 Report

1 included a schedule of planned events at Lake Washington Rowing Club from June to October
2 2005. Some of the events include up to 100 people. (*Ex. 13*) This would not generate demand
3 for 100 parking spots, as some people would drive together or take public transit, but the
4 events would increase parking demand near Lee's Mooring. There would also be additional
5 parking demand from service staff working at evening events.

6 [9]

7 Of the 107 parking spaces in the two U-Park lots, 70 spaces are covenanted parking
8 spaces. The parking spaces in the U-Park lots were made subject to covenants in order to fulfill
9 off-street parking requirements for five different commercial buildings along N. Northlake Way.
10 A parking covenant does not guarantee that a parking space will be available for an employee or
11 customer of the business that entered into the parking covenant. If a parking covenant is
12 terminated, the facility relying on the parking covenant to meet parking requirements would have
13 to find additional parking or cease a particular use. (*Testimony of Ron Wright; Exhibit 15*) The
14 fact that 70 of the 107 U-Park spaces are subject to parking covenants by five nearby businesses
15 does not mean that 70 of the U-Park spaces will always be full, or that the 70 covenanted spaces
16 provide adequate parking for the businesses that have covenanted for those spaces. The
17 covenanted spaces are evidence of the increasing demand for parking by customers and
18 employees of nearby businesses.

19 [10]

20 In addition to the information provided by the applicants and Heffron, the City of Seattle
21 did its own research and analysis of parking demand and supply. This included visits to the site.
On February 9, 2005, Scott Ringgold of the City of Seattle Department of Planning and
Development visited the site and surrounding area to assess parking demand and availability.
Ringgold also contacted an employee of U-Park who stated that the large U-Park lot never gets

1 more than ¾ full. (*Testimony of Scott Ringgold*) This statement by the U-Park employee is
2 contradicted by the statements of U-Park Vice-President Ken Phillips, as described in the parties'
3 Stipulated Finding of Fact 25. Seattle considers parking in the area to be “saturated” during
4 weekday daytimes and during Fremont events. (*Testimony of Scott Ringgold*)

5 [11]

6 The Institute for Transportation Engineers’ (“ITE”) Parking Generation manual has
7 parking demand rates for different types of land uses. There is no demand rate for houseboats,
8 but there are demand rates for single-family dwellings, condominiums, and marinas. In its 2004
9 Report, Heffron used the demand rates in ITE’s 2nd Edition for condominiums of 1.11 spaces per
10 unit to determine that demand from Lee’s Mooring to be peak demand of 17 spaces, and
11 Saturday demand of 27 spaces. Based on the ITE figures for marinas, the commercial moorage
12 component at Lee’s Mooring Houseboats would produce a demand of 3 spaces on weekdays and
13 6 spaces on weekends. Heffron did not use the higher marina parking rates documented at
14 Shilshole Bay Marine in Ballard because that facility has commercial uses not present at Lee’s
Mooring.

15 [12]

16 When combined with the Lee’s Mooring residents parking survey conducted by Gemma
17 Daggett, existing peak parking demand by Lee’s Mooring residents ranges from 25 to 28 spaces
18 during the weekday, and 33 on weekends. The 3rd Edition of ITE’s parking demand study has
19 range of spaces per unit between 1.46 to 1.96 vehicles per condominium, and the rate for a single
20 family dwelling is 1.83 spaces per unit. The higher rate in the 3rd edition, or the rates for single-
21 family dwellings are relevant figures to consider in determining parking demand. (*Testimony of
Tod McBryan; Exhibit 3; Testimony of John Shaw*)

[13]

1 During weekday and weekend evenings, parking may be available in the public spaces on
2 North Northlake Way and in the small and large U-Park lots. (*Ex. 22 – photos of site and*
3 *parking lots*) The most likely location for available parking is the large U-Park lot, which has
4 approximately 83 spaces, while the small lot has approximately 24 spaces. The small lot is
5 across N. Northlake Way from the houseboats, while the large lot is across N. Northlake Way
6 and East approximately 500 to 800 feet. In this area, N. Northlake Way does not have sidewalks
7 or crosswalks, and is not well lit at night. Even when parking is available in the small or large
8 U-Park lots, it can be difficult for older residents of Lee’s Mooring, those with children, or those
needing to carry items from their car to their houseboat. (*Testimony of Gemma Daggett*)

9 [14]

10 A number of the on-street parking spaces in the Fremont area have time limits, so that
11 parking is limited to two or three hours. The on-street spaces on N. Northlake Way in front of
12 Lee’s Mooring do not have a specific hourly limit, but are subject to Seattle’s general parking
13 ordinance that cars not be left in a space for more than 72 hours. Some of the on-street spaces on
14 N. Northlake Way are occupied for over 72 hours at a time by boaters who moor their boats at
15 Lee’s Mooring or other marinas in the area, and thus are not available to Lee’s Mooring
16 residents. Use of the public parking spaces on N. Northlake Way and of the U-Park lot increases
17 during the summer boating season months. (*Testimony of Gemma Daggett; Testimony of Sylvia*
Hubbard)

18 [15]

19 Parking is problematic for Lee’s Mooring residents when they leave Seattle for an
20 extended period of time for vacation, business, or other purposes. This is because the on-street
21 parking is limited to 72 hours, and the U-Park lots can only be paid for in hourly, daily, or
monthly increments. A U-Park lot user cannot pay for more than one day at a time, unless the

1 user pays for an entire month. Consequently, Lee's Mooring residents have used off-site car
2 storage when leaving for an extended period of time. Cars parked in the U-Park lots have been
3 stolen or burglarized. (*Testimony of Charlie Weems*)

4 [16]

5 Parking in Fremont has become more difficult in recent years, and this trend is expected
6 to continue. This is due to a number of factors, including new commercial and residential
7 development, and changes in the nature of businesses in the area. At one time, the area North of
8 N. Northlake Way and South of 34th Street from Aurora Avenue N. to Stone Way consisted
9 solely of parking. Recently, the construction of buildings in that area for the Lake Washington
10 Rowing Club and The Production Network eliminated substantial parking. The building once
11 used by the venerable marine supply store Dock Freeman's is now a computer company with
12 more employees, and thus higher parking demands. Fremont Dock Company, which owns the
13 property where the U-Park lots are located, expects that the two U-Park lots will at some point be
14 developed. (*Testimony of Gemma Daggett; Testimony of Russ Daggett; Testimony of Charlie
Weems; Declaration of Suzanne Burke, Ex. 19*)

15 [17]

16 Lee's Mooring is considered to have a "parking deficit" – it has fewer parking spaces
17 available than what would be required under Seattle's land use code. Under the City's code,
18 Lee's Mooring would be required to provide 19 parking spaces (based on approval of 15
houseboats, though only 14 houseboats exist today).

19 [18]

20 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
21 BASED ON THE FOREGOING STIPULATED AND BOARD FINDINGS OF FACT, THE
BOARD ENTERS THE FOLLOWING:

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III. CONCLUSIONS OF LAW

[1]

The Board has jurisdiction over the subject matter and the parties. RCW 90.58.180. As the appealing party, Lee's Mooring has the burden of proof. RCW 90.58.140(7).

[2]

Seattle's Shoreline Master Program is codified at Section 23.60 of the Seattle Municipal Code. The criteria governing over-water parking is at SMC 23.60.092(B), (C), and (D), which state:

B. Uses prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses. Examples of accessory uses include parking, offices and caretaker's quarters not exceeding eight hundred (800) square feet in living area. For purposes of this section, landfill, water-based airports, heliports and helistops shall not be considered to be accessory to a principal use and shall only be permitted as provided in the applicable shoreline environment.

C. Unless specifically stated otherwise in the regulations for the applicable environment, accessory uses which are non-water-dependent and non-water-related, even if accessory to water-dependent or water-related uses, shall be permitted over water according to subsection A above only if either:

1. The over-water location is necessary for the operation of the water-dependent or water-related use; or

2. The lot has a depth of less than fifty (50) feet of dry land.

D. Parking shall not be permitted over water unless it is accessory to a water-dependent or water-related use located on a lot with a depth of less than fifty (50) feet of dry land and the Director determines that adequate on-site or off-site dry land parking within eight

1 hundred (800) feet is not reasonably available.

2 [3]

3 There is no dispute that the parking is an accessory use to the principal water-dependent
4 use of the houseboats and commercial moorage. There is also no dispute that the lot has less
5 than 50 feet of dry land. The key disagreements over the application of SMC 23.60.092 is
6 whether the proposed parking structure is necessary for the operation of the principal use
7 (subsection B), and whether adequate on-site or off-site dry land parking within eight hundred
8 (800) feet is reasonably available. (subsection D).

9 [4]

10 In determining whether the proposed parking is necessary, the Board looks to the
11 requirements of the City's code. SMC 23.54.015, Chart A, requires one parking space for each
12 floating home and the caretaker unit, and one parking space for each 140 lineal feet of moorage.
13 Thus, were the Lee's Mooring project, including the caretaker's structure, to be proposed as a
14 new development, it would require 19 parking spaces. Under the proposal before the Board, a
15 total of 22 parking spaces would exist, but five would not be available to Lee's Mooring during
16 the day based on the easement agreement with Strickland. The proposal would not cure the
17 Lee's Mooring parking deficit at all times, but would bring Lee's Mooring closer to conformity
18 with parking requirements in the city's code.

19 [5]

20 Lee's Mooring residents testified to a number of different parking uses that are necessary,
21 including parking for themselves, guests, and service workers. Based on the parking
requirements in the city's code and the need for parking expressed by Lee's Mooring residents,

1 the Board concludes that the proposed parking is necessary for the operation of the principal use.
2 To conclude otherwise would mean that parking is not considered necessary for either the
3 residential or moorage component of the Lee's Mooring project. There was no evidence to
4 support this conclusion. To the extent that the determination of whether parking is "necessary"
5 is based on whether adequate parking is reasonably available within 800 feet, the Board's
6 analysis of that provision below also relates to whether the proposed parking is necessary.

7 [6]

8 Whether adequate parking is reasonably available within 800 feet involves both objective
9 and subjective considerations. Objectively, there are times when adequate parking within 800
10 feet is not reasonably available. Specifically, during Fremont community events, parking is not
11 available in the U-Park lots. Further, the 2004 Heffron study shows that utilization of available
12 on-street parking is at a rate considered to be effectively full during weekday business hours. To
13 its credit, Seattle does not dispute this. Objectively, Heffron's and Seattle's surveys, and
14 information from U-Park shows that at times, there are open parking spaces in the U-Park lots.

15 [7]

16 However, simply because parking spaces are vacant at times does not mean that parking
17 is "reasonably available." "Reasonably available" includes subjective consideration of access,
18 safety, and the parking needs of the users. The available U-Park spaces are in an area without
19 sidewalks and lighting, and cars in the lots have been burglarized. Overall, the safety of the U-
20 Park lots is not reasonable. Houseboat living requires additional effort to carry items to the
21 houseboats. Parking in the U-Park lots (by residents, guests, or service workers), and then

1 carrying goods or supplies and shepherding children to the houseboats by walking along N.
2 Northlake Way is not reasonable.

3 [8]

4 Seattle argued that the SMP “does not say that adequate off-site parking must **always** be
5 available within 800 feet.” (*Seattle Pre-Hearing Brief at 6, emphasis in original*) The most
6 relevant periods of time to consider whether parking is reasonably available is when Lee’s
7 Mooring residents create parking demand. The residents of Lee’s Mooring are a unique
8 population, in that many work from home or are retired. They thus have different parking
9 demands during the day than a typical 8-5 worker. While the parking surveys showed that
10 spaces may be available in the U-Park lots during weekday evenings or winter weekends, that is
11 of no aid to Lee’s Mooring residents who have parking demands throughout the weekday.

12 [9]

13 The Board’s conclusion that adequate parking is not reasonably available within 800 feet
14 is also supported by evidence that parking is getting worse in Fremont. Fremont has been
15 identified by Seattle as one of the neighborhoods with the most severe parking problems. The
16 parking trends have been driven by land use activities. Over the past decade, Fremont has
17 experienced significant commercial development, both in the construction of new buildings, and
18 in the conversion of existing buildings to different commercial uses with increased parking
19 demands. Lee’s Mooring is located in the midst of these land use changes. Implementation of a
20 RPZ in the areas of Fremont north and west of Lee’s Mooring may provide some parking relief
21 to residents in those areas, but would likely increase parking demand outside the RPZ to areas
such as the U-Park lots and the public spaces on N. Northlake Way. Significantly, the owner of

1 the U-Park lots stated “there is no question in my mind that those lots will not permanently be
2 parking.” (*Ex. 19, Declaration of Suzanne Burke*) Thus, the U-Park lots may provide adequate
3 parking at certain times, but not always when Lee’s Mooring residents need parking, and even
4 then, only for the time being.

5 [10]

6 In its denial, Seattle also concluded that the Lee’s Mooring proposal would be an
7 expansion of the floating home moorage, and therefore subject to the conditional use permit
8 requirements in the Seattle SMP at SMC 23.60.604. Seattle concluded that the proposal did not
9 meet the provision at SMC 23.60.604(3)(b) that “the residential use will not usurp land better
10 suited to water-dependent, water-related or associated industrial or commercial uses . . . ” At the
11 same time, Seattle concluded that the bulk of the project would constitute an adverse impact on
12 the surrounding area. These conclusions were in error for two reasons. First, the proposal does
13 not usurp a use more suited to the shoreline location because the site is already used for
14 houseboats and commercial moorage – both water dependent uses. Second, there is no evidence
15 suggesting a water dependent industrial use would seek to use the area on top of the existing
16 parking deck, or that industrial shoreline uses are seeking to locate in Fremont. Further, if the
17 bulk of the parking structure itself is an adverse impact on the surrounding area, then not even a
18 commercial or industrial use of similar bulk could be built without having some shoreline
19 impact.

20 [11]

1 Seattle determined that the Lee's Mooring proposal met the other conditional use criteria
2 in the US shoreline environment. Seattle's decision also analyzed Ecology's shoreline
3 conditional use permit criteria at WAC 173-27-160(1). These criteria are:

- 4 (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the
master program;
- 5 (b) That the proposed use will not interfere with the normal public use of public
6 shorelines;
- 7 (c) That the proposed use of the site and design of the project is compatible with other
authorized uses within the area and with uses planned for the area under the
comprehensive plan and shoreline master program;
- 8 (d) That the proposed use will cause no significant adverse effects to the shoreline
environment in which it is to be located; and
- 9 (e) That the public interest suffers no substantial detrimental effect.

10
11 In addition, shoreline conditional use permits require consideration of "the cumulative
12 impact of additional requests for like actions in the area." WAC 173-27-160(2).

13 [12]

14 Seattle's decision concluded that the project was inconsistent with the shoreline master
15 program, and by extension, the policies of the SMA at RCW 90.58.020, because of impacts to
16 view corridors, location of parking above water, and the availability of alternative parking. The
17 parties reached a settlement on the view corridor issue, and so this issue is no longer before the
18 Board. The Board has concluded that adequate parking within 800 feet is not reasonably
19 available, and that the proposed second deck of overwater parking complies with the Seattle
20 SMP.

21 [13]

1 The Board concludes that the Lee's Mooring proposal meets the shoreline conditional use
2 permit criteria in WAC 173-27-160. Seattle cited to a 1976 Shorelines Hearings Board case and
3 to Ecology's revised Shoreline Guidelines for authority that parking is a low priority shoreline
4 use. In *Ecology v. Mason County*, SHB No. 128 (1976 WL 38786), the applicant sought to place
5 fill in a shoreline of statewide significance solely to build a parking lot. The Board concluded
6 that "a parking lot has but a low priority of use on the shorelines." Ecology's Shoreline
7 Guidelines state

8 "Parking facilities in shorelines are not a preferred use and shall be allowed only as
9 necessary to support an authorized use. Shoreline master programs shall include policies
and regulations to minimize the environmental and visual impacts of parking facilities."

10 WAC 173-26-241(k).

11 Neither of these examples is relevant to the Board's consideration of the parking
12 proposed by Lee's Mooring. The Mason County case involved placing fill in a shoreline of
13 statewide significance to create land solely for parking. That is clearly a different type of project
14 than here, where Lee's Mooring is seeking to add a second parking deck on top of an existing
15 parking deck. Ecology's Shoreline Guideline provision states that shoreline parking "shall be
16 allowed only as necessary to support an authorized use." The Board has already determined that
17 the parking is necessary, and there is no dispute that the parking is for a water dependent use.

18 [14]

19 A case more in point is *Ecology vs. Ballard Elks*, 54 Wn. 2d 551, 527 P. 2d (1974) where
20 the Board approved overwater construction of club facilities on Shilshole Bay. The decision was
21 based on findings by the Board that adjacent structures were not all water dependent, navigation
over the tidelands was *de minimus*, interference with view would be minor, building over water

1 would not affect public health, wildlife, aquatic life, the shoreline environment or public use of
2 the water, substantial numbers of people would enjoy the shoreline, and there was no public
3 protest. The Supreme Court affirmed the Board, saying that it "appropriately considered the
4 practical realities pertaining to the existing shoreline, the policy of RCW 90.58, and the relevant
5 guidelines in arriving at its decision."

6 [15]

7 The policies of the SMA make clear that the preferred uses of shorelines are those "which
8 are consistent with control of pollution and prevention of damage to the natural environment, or
9 are unique to or dependent upon use of the state's shoreline." RCW 90.58.020. In this case,
10 there was no evidence of adverse impacts or damage to the shoreline. In analyzing Seattle's
11 SMP, the Board has already concluded that the parking is necessary to support the authorized
12 water dependent use of the houseboats and commercial moorage. The Board concludes that the
13 Lee's Mooring proposal is consistent with the policies of the SMA.

14 [16]

15 Seattle also denied the shoreline permits on the basis of possible cumulative impacts,
16 concluding:

17 "Considered cumulatively, it's reasonable to conclude that widespread provision of two-
18 story parking structures over the water in this environment would be inconsistent with
shoreline policies."

19 (*Ex. 7, page 10*)

20 There was no evidence in Seattle's decision, or at hearing, of the likelihood of such
21 cumulative impact. Seattle is correct that numerous new multi-story overwater parking
structures would be inconsistent with shoreline policies. However, this case relates to an existing

1 overwater parking structure to which a second level of parking will be added. Of the eight new
2 spaces, three will be overwater. In a recent decision concerning possible cumulative impacts
3 from a variance, the Board stated that “cumulative impacts are not likely to occur because the
4 land use pattern in the area will not result in similar requests for variances.” *Wriston v. Ecology*,
5 SHB No. 05-005 (Conc. of Law 26). Similarly, there is no evidence that there are other water
6 dependent uses without adequate parking reasonably available that could seek to add parking to
7 an existing overwater parking structure.

8 [17]

9 To establish shoreline goals and policies, the Seattle SMP references the Land Use
10 Element of Seattle’s Comprehensive Plan. SMC 23.60.004. The Land Use Element of Seattle’s
11 Comprehensive Plan states:

12 However, because of their historic role and legal recognition by the City, floating home
13 moorage are [sic] designated as a water dependent. Such designation does not imply
14 support for increase of floating home moorage. The intent of this policy is to recognize
15 the existing floating home community in Lake Union and Portage Bay, while protecting
16 natural areas, preserving public access to the shoreline, and preventing displacement of
17 water-dependent commercial and manufacturing uses by floating homes.

18 City of Seattle Comprehensive Plan Land Use Element, LU 231(2).

19 While this policy would not support developing new floating home communities, it
20 evidences a goal of preserving those in existence. The Lee’s Mooring proposal is a response to
21 land use trends in Fremont that have worsened parking for Lee’s Mooring residents. The
approval of shoreline permits to Lee’s Mooring would have no environmental impact on the
shoreline, would bring the project closer to compliance with the parking requirements of the

1 Seattle Municipal Code, and furthers the objective of preserving the viability of houseboat
2 communities on Lake Union.

3 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

4 BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE
5 BOARD ENTERS THE FOLLOWING:

6 **IV. ORDER**

7 The decision of the City of Seattle Department of Planning and Development denying a
8 Shoreline Substantial Development Permit and Shoreline Conditional Use Permit is
9 REVERSED. The decision is remanded to the City of Seattle for issuance of shoreline permits
10 including the shoreline conditions listed in the permit decision.

11 SO ORDERED this 15th day of November 2005.

12 **SHORELINES HEARINGS BOARD**

13 BILL CLARKE, Presiding

14 WILLIAM H. LYNCH

15 MITCH BROWN

16 GORDON CRANDALL

17 JUDY WILSON